United States Court of Appeals

for the Second Circuit

APPELLEE'S BRIEF

75-4184

Signed

IN THE UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

ARTHUR J. CROSSLAND and SUSAN CROSSLAND,

Appellants

v.

COMMISSIONER OF INTERNAL REVENUE,

Appellee

ON APPEAL FROM THE DECISION OF

THE UNITED STATES TAX COURT

BRIEF FOR THE APPELLEE

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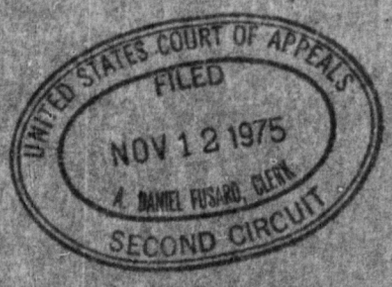

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STATEMENT OF THE ISSUE PRESENTED

Whether the Tax Court correctly found that taxpayer, an itinerant worker, was not entitled to a deduction for "away from home" travel expenses under Section 162 of the Internal Revenue Code of 1954, because he did not maintain a "home" away from his temporary places of employment.

STATEMENT OF THE CASE

This appeal involves $1,796.09 in federal income taxes for the year 1968. The Tax Court (Honorable Cynthia Holcomb Hall) entered its memorandum findings of fact and opinion, which are reported at 33 T.C.M. 1278, on October 24, 1974. (R. 3a, 4a-15a.)[1/] A decision in favor of the Commissioner was entered on February 3, 1975. (R. 3a.) Taxpayer filed a timely notice of appeal on April 18, 1975. (R. 3a.) Jurisdiction is conferred upon this Court by Section 7482 of the Internal Revenue Code of 1954.

The facts pertinent to this appeal, most of which were found by the Tax Court (R. 6a-12a), may be summarized as follows:

Taxpayer[2/] is a leased contract technical writer by profession, specializing in the field of electronics. (R. 6a; Tr. 16-17.) Taxpayer refers to those in this profession as "job shoppers" because such leased contract writers are

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1/ "R." references are to the separately bound record appendix. Other references are to the documents comprising the original record on appeal as transmitted to this Court by the Clerk of the Tax Court. "Tr." references are to the transcript of proceedings dated February 4, 1974.

2/ As used in this brief, "taxpayer" will refer to Arthur J. Crossland. Taxpayer filed, on his own behalf, a petition in the Tax Court relating to his taxable year 1968 (Tax Court No. 2431-72). He and Susan Crossland (his wife since 1969) subsequently filed a petition relating to their taxable years 1970 and 1971 (Tax Court No. 7613-73). These cases were consolidated for trial and opinion in the Tax Court. As a result of concessions by both the Crosslands and the Commissioner, this appeal is taken only from the Tax Court decision in Tax Court No. 2431-72, relating to the taxable year 1968.

generally hired only for short-term writing projects. (R. 6a; Tr. 17, 47-48.) Taxpayer obtains employment in this profession by sending resumes to contract shops which provide technical personnel to industries. (Tr. 16.) The average duration of jobs held by taxpayer between 1957 and 1972 was 4.66 months and the jobs were situated in locations from Florida to Vermont. (R. 7a; Tr. 5; Ex. 8.)

In 1955, taxpayer purchased a home in Windsor, Pennsylvania, which he intended to make his permanent residence. (R. 7a; Tr. 44.) His former wife and children lived there while taxpayer was involved in his short-term jobs in other parts of the country. (R. 7a.)

In 1965, taxpayer was employed at the Kennedy Space Center in Florida where he obtained a driver's license and car registration. He left that job and, after job shopping, secured employment with General Electric (G.E.) in Oklahoma City. In March, 1966, G.E. moved the project on which taxpayer was working to Syracuse, New York. (R. 7a; Tr. 28)

Allegedly, on July 9, 1966, taxpayer purchased an interest in his mother's home in Shamokin, Pennsylvania, for $2,000. (Ex. 9.) This sum was payable $200 down, and $40 per month, without interest, until the $1,800 balance was reduced to zero. However, both taxpayer and his mother were quite casual regarding the monthly payments. Moreover,

whatever money was sent was not earmarked as payments on the home, but was rather to help taxpayer's mother. (Tr. 81.) Taxpayer never established his regular abode at his mother's home in Shamokin. (R. 7a-8a.)

Taxpayer testified that in 1967, he spent $3,000 refurbishing his house in Windsor, Pennsylvania. (Tr. 43-44.) In so doing, taxpayer was prompted by his desire to quit his profession as a leased contract writer and to return to Windsor as a free-lance writer, performing other jobs, as necessary, to meet expenses. After incurring the $3,000 expense, however, taxpayer decided to continue job shopping until the bills were paid off. (Tr. 44.) His former wife threatened that if he went job shopping, she was going to divorce him. (Tr. 93.) But in November, 1967, he secured employment as a leased contract technical writer in Essex Junction, Vermont. (R. 8a; Stip. par. 6.) In late 1967 or early 1968, taxpayer became estranged from his former wife and they decided to get a divorce. (R. 8a; Tr. 92.)

At the time of the separation, taxpayer moved out of the house in Windsor. Although taxpayer continued to make mortgage and furniture payments on the Windsor house until October 2, 1968, when his former wife assumed ownership as part of the divorce settlement, at the time of the separation he no longer considered his home to be in Windsor. (R. 8a;

Tr. 44, 92-94.) After leaving the Windsor house, taxpayer kept his second car at his mother's house (until the car was sold) along with files, books and records. (Tr. 34.) He occasionally left clothing there but did not help in furnishing the house. (Tr. 34-35.) In 1968, taxpayer spent, at most, six consecutive days at his mother's home in Shamokin. (Tr. 37.) He made three visits there in 1968, one of them for the primary purpose of breaking his consecutive residency in Vermont where he worked throughout 1968. (R. 9a; Tr. 57.) Taxpayer never worked as a leased contract writer in the Shamokin area. (Tr. 95.)

From November 13, 1967, through May 17, 1968, taxpayer worked as a leased contract writer for International Business Machines (I.B.M.) in Essex Junction, Vermont. (R. 8a; Tr. 22; Stip. par. 6.) While working on that short-term job, taxpayer lived in a motel. (R. 10a; Tr. 24.) He traveled to Shamokin after completion of that job on May 17, 1968, and was notified there by his contract shop of an opening in his specialty with G.E. in Burlington, Vermont, some 15 miles from Essex Junction. (R. 9; Tr. 22-24.) Accordingly, he returned to Vermont on May 23, 1968, and remained on that job until March, 1969. (R. 9a.) For the first few months in Burlington, taxpayer lived in an apartment. (R. 10a; Tr. 24-25.) In August, 1968, taxpayer

purchased a travel trailer. (R. 10a; Tr. 35.) Taxpayer married his present wife in early 1969, and they lived in that trailer until 1971. (R. 10a; Tr. 35-36, 56.) Taxpayer remained employed on short-term jobs with G.E. and I.B.M. in Vermont through May, 1970. (R. 9a; Tr. 30, 31; Stip. Par. 6.) At no time during 1968 did taxpayer's former wife or her children live with taxpayer in Vermont. (Tr. 24.)

Northern Industrial Services, Inc., of Albany, New York, the contract shop through which taxpayer secured his two jobs in 1968, made $2,745.45 in per diem payments to taxpayer in that year (Tr. 22-24, 38-43, Stip. Ex. 4-D.) On his federal income tax return for 1968 (Stip. Ex. 1-A) taxpayer reported the per diem payments from Northern Industrial Services, Inc., as income and claimed a deduction of $5,630.55 for the cost of travel, food and lodging while in Essex Junction and Burlington, Vermont. (R. 11a.) The Commissioner denied this deduction (R. 11a), and determined a deficiency in the amount of $1,796.09. (Pet. Tax Court No. 2431-72.) Taxpayer instituted this action in the Tax Court seeking a redetermination of the deficiency. Taxpayer, appearing pro se, there alleged that he was entitled to the deduction based on the facts that his employment in Vermont was temporary and that he maintained a permanent abode in Windsor or Shamokin, Pennsylvania, in 1968. (Pet. pars. 5(f)(cont.), 5(i)(cont.).) The Tax Court, disallowed the deduction on the basis of its finding that, although taxpayer's jobs in 1968 were temporary

in nature, he did not maintain a "home"--a permanent place of abode--in Windsor or Shamokin, Pennsylvania during that year. (R. 8a; 14a.) Accordingly, the Tax Court classified taxpayer as an itinerant worker whose home for tax purposes was wherever he happened to be working, and ruled that taxpayer did not incur his travel expenses "while away from home" as is required for a deduction under Section 162(a)(2) of the Internal Revenue Code of 1954. (R. 14a-15a.) From the decision entered pursuant to these findings, taxpayer now appeals. By an order of this Court dated September 9, 1975, counsel was appointed to aid taxpayer in prosecuting his appeal to this Court.

SUMMARY OF ARGUMENT

Taxpayer is an itinerant electronics technical writer who in the 1960's had no settled place of business, but moved from one temporary job to another. He seeks to deduct virtually all of his food, lodging and other travel expenses during 1968 as "away from home" traveling expenses under Section 162(a)(2) of the Internal Revenue Code of 1954. There is no dispute that in such cases of itinerant workers, taxpayer must show that he had a "home" in the ordinary sense--a regular place of abode in a real or substantial sense from which the taxpayer went on his temporary assignments. The trial court's findings on such a question are factual and may not be reversed unless clearly erroneous.

In the instant case, there was substantial evidence to sustain the Tax Court's findings that neither Shamokin, Pennsylvania--where taxpayer's mother resided--nor Windsor, Pennsylvania--where his estranged wife and children lived--constituted taxpayer's "home" in 1968. Taxpayer was employed in Vermont virtually all of that year, and made only three very brief visits to Shamokin-- the longest lasting six days. Although taxpayer purportedly had been purchasing an interest in his mother's Shamokin house since 1966, the Tax Court properly found that regular payments were not sent, and money which was sent was actually to help his mother rather than to purchase property. Indeed, taxpayer does not even claim to have paid any share of the utilities, taxes, insurance, or maintenance

expenses of the Shamokin house. These and other facts showing his ties to Vermont more than outweighed taxpayer's meagre ties to Shamokin--such as his storage of some clothing, files and records there and his receipt of a few communications at his mother's house.

The Tax Court's finding that Windsor was not taxpayer's home in 1968 was similarly well-grounded. Taxpayer left his wife and children there in 1967 and went to Vermont despite his wife's threat to divorce him if he did so. In late 1967 or early 1968, he and his wife became estranged, and in October 1968, they were divorced. Taxpayer introduced no evidence showing he spent even one full day in Windsor in 1968. His reliance on his payments on the Windsor house during part of 1968 is misplaced, since, in the circumstances, the Tax Court rightly found that such payments indicated that Windsor was his wife's and children's home--but not his home.

Finally, taxpayer errs in charging that the Tax Court committed legal error in considering his failure to incur duplicate living expenses in Vermont and Pennsylvania in making its findings. Under settled decisions of this and other courts, the absence of such duplicate living expense is a proper factor for consideration. Indeed, taxpayer himself suggests as much in emphasizing his mortgage and furniture payments respecting his estranged wife's home in Windsor before their divorce. In any event, numerous other record facts, apart from

the lack of duplicate expenses, support the Tax Court's findings that neither Windsor nor Shamokin was taxpayer's home during any part of 1968.

The decision of the Tax Court should therefore be affirmed.

ARGUMENT

THE TAX COURT CORRECTLY FOUND THAT TAXPAYER WAS NOT ENTITLED TO A DEDUCTION FOR TRAVEL EXPENSES INCURRED "WHILE AWAY FROM HOME" IN 1968, BECAUSE HE DID NOT MAINTAIN A "HOME" AWAY FROM HIS TEMPORARY PLACES OF EMPLOYMENT

A. Introduction--The meaning of "home" in cases involving itinerant workers

As a general rule, amounts expended for travel, food and lodging are specifically nondeductible as personal living expenses under Section 262 of the Internal Revenue Code of 1954, Appendix, infra. Section 162(a)(2) of the Code, Appendix, infra, however, allows a deduction for such traveling expenses, including amounts expended for meals and lodging, incurred while away from home in the pursuit of a trade or business.

In Commissioner v. Flowers, 326 U.S. 465, 470 (1946), the Supreme Court recognized the following as the requirements for taking a deduction under Section 162(a)(2):

> 1. The expense must be a reasonable and necessary travel expense, * * *.
>
> 2. The expense must be incurred "while away from home."
>
> 3. The expense must be incurred in pursuit of business. This means that there must be a direct connection between the expenditure and the carrying on of the trade or business of the taxpayer or of his employer. Moreover, such an expenditure must be necessary or appropriate to the development and pursuit of the business or trade.

The first and third Flowers requirements are not in question here; the issue in dispute instead is that involving the specific "away from home" requirement.

This case presents one of the several types of situations in which the "away from home" issue can arise. It does not involve the frequent situation where a taxpayer locates his home and family in one place, and operates a more or less settled business in another location, attempting to deduct his living expenses incurred in the latter location. In such circumstances, the legal approaches of the Internal Revenue Service and some of the courts have differred to some extent.[3/] Instead, this case presents the probably less frequent situation where the taxpayer has no settled or regular place of business, but instead engages in a series of temporary assignments. In such cases, as taxpayer agrees (Br. 12), the authorities are in agreement that the precise question is whether the taxpayer has a "home in the ordinary sense". Rosenspan v. United States, supra; Brandl v. Commissioner,

3/ Where a taxpayer maintains a residence in one location, and is employed for an indefinite time in another location, the Commissioner has generally taken the position that a taxpayer's home is his principal place of business. Rev. Rul. 60-189, 1960-1 Cum. Bull. 60; Rev. Rul. 75-432, 1975-41 Int. Rev. Bull. 6; see also Curtis v. Commissioner, 449 F. 2d 225 (C.A. 5, 1971); Wills v. Commissioner, 411 F. 2d 537 (C.A. 9, 1969); Tucker v. Commissioner, 55 T.C. 783 (1971). This Court has taken a somewhat different approach, holding that the word "home" should not be given a novel meaning and that it should normally refer to one's principal place of abode, but holding that in such factual circumstances the long-term conduct of business "away from home" is for personal reasons and, thus, fails to satisfy the third Flowers test. In most cases, the result will be the same whichever test is used. See Rosenspan v. United States, 438 F. 2d 905 (C.A. 2, 1971), cert. denied, 404 U.S. 864 (1971), rehearing denied, 404 U.S. 959 (1971); Six v. United States, 450 F. 2d 66 (C.A. 2, 1971).

513 F. 2d 697, 699 (C.A. 6, 1975). In other words, the question is whether taxpayer here "maintain[s] a regular place of abode in a real or substantial sense in a particular city from which the taxpayer is sent on temporary assignments"--in which case deductibility will be allowed--or whether taxpayer is "an itinerant worker [without a] * * * regular place of abode"--in which case traveling expenses are nondeductible. Rev. Rul. 75-432, supra, p. 6; see Duncan v. Commissioner, 17 B.T.A. 1088 (1929), aff'd per curiam, 47 F. 2d 1082 (C.A. 2, 1931); James v. United States, 308 F. 2d 204 (C.A. 9, 1962); Rev. Rul. 73-529, 1973-2 Cum. Bull. 37. This test is based on the plain and ordinary meaning of the statutory term "home", as well as--

> congressional recognition of the rational distinction between the taxpayer with a permanent residence--whose travel costs represent a duplication of expense or at least an incidence of expense which the existence of his permanent residence demonstrates he would not incur absent business compulsion--and the taxpayer without such a residence.

Rosenspan v. United States, supra, 438 F. 2d, p. 912; see also Brandl v. Commissioner, supra. It is on this rationale that the authorities hold that "a taxpayer has a 'home' for * * * [away from home purposes] only when it appears that he has incurred substantial continuing living expenses at a permanent place of residence * * *." James v. United States, supra, p. 208 (citing authorities); United States v. Mathews, 322 F. 2d 91, 93 (C.A. 9, 1964).

B. Taxpayer has failed to show that the Tax Court clearly erred in finding that his mother's house in Shamokin was not his "home"

The Tax Court found that taxpayer "never established his regular abode at his mother's home in Shamokin" (R. 8a), and that "in 1968 [taxpayer] was an itinerant worker whose home for tax purposes was wherever he happened to be". (R. 14a.) The court, therefore, disallowed taxpayer's claimed traveling expense deductions for that year. These findings are factual, and should not be reversed unless clearly erroneous. Fisher v. Commissioner, 230 F. 2d 79, 81 (C.A. 7, 1956); see Commissioner v. Flowers, 326 U.S. 465, 470 (1946); Peurifoy v. Commissioner, 358 U.S. 59, 60-61 (1958). Here, there was ample and substantial evidence in the record to support these findings.

The Tax Court demonstrated a solid factual basis for its finding that Shamokin was not taxpayer's home in 1968. The court found that taxpayer purchased a house in Windsor, Pennsylvania, in 1955, where he lived with his former wife and children until late 1967 or early 1968, when he was separated from his former wife. (R. 7a-8a.) The court found that taxpayer "Allegedly * * * purchased an interest in his mother's home in Shamokin, Pennsylvania,[4/]

4/ Shamokin, Pennsylvania, is located east of the Susquehanna River about 45 miles north-northeast of Harrisburg. Windsor, Pennsylvania, is located west of the Susquehanna River about 30 miles south-southeast of Harrisburg. See Rand McNally &. Co., 1972 Commercial Atlas & Marketing Guide (103d ed.), p. 447.

for $2000" on July 9, 1966, payable $200 down, and $40 per month. (R. 7a-8a.) The court also found, however, that both taxpayer and his mother "were quite casual regarding the monthly payments", that taxpayer "sent money only to the extent possible", and that "whatever money was sent was not earmarked as payments on the home", but "was to help * * * [taxpayer's] mother." (R. 8a.) In view of these facts--which taxpayer does not challenge--and the court's finding that taxpayer was in Vermont working during all of 1968 except a few brief trips back to Shamokin (R. 8a-9a), the court properly found that taxpayer "never established his regular abode at his mother's home in Shamokin." (R. 8a.)

Taxpayer urges (Br. 13) that the Tax Court clearly erred in failing to find that Shamokin was taxpayer's home on the basis of (1) taxpayer's belief that Shamokin was his home and his ~~interest~~ "to return to Pennsylvania"; (2) his 1966 contract to acquire an interest in his mother's home; (3) the moving of his "belongings" and job "files and records" to Shamokin in 1968 after separating from his wife; (4) the fact that "he took only what he needed [to Vermont] for the term of his new contract"; (5) the availability of the Shamokin address as a point for receiving job letters and telephone calls; and (6) taxpayer's possession of a Pennsylvania drivers' license. However, assuming taxpayer's contentions are true, they would not demonstrate that the Tax Court's finding was clearly erroneous. Taxpayer's testimony as to his intent may well

have been disbelieved by the trial court, and in any event is subjective and thus not entitled to the weight given objective facts. Brandl v. Commissioner, supra, p. 699. Taxpayer merely agrues (Br. 10) that he "entered into an executory contract to acquire a one-half interest" in his mother's house, but does not challenge the Tax Court's finding (R. 8a) that the casual payments actually made were to help his mother rather than to purchase the house. In view of the fact that the Shamokin house had not been taxpayer's home prior to 1968 and that he spent virtually all his time in Vermont in 1968, with only three brief visits to Shamokin, on this evidence alone it would not have been error for the Tax Court to find that taxpayer had failed to bear his burden of proving that his mother's Shamokin home was his home in 1968. See Brandl v. Commissioner, supra, p. 699 (no proof brother's home was also taxpayer's home).

In any event, there was substantial further record evidence to buttress the Tax Court's finding that the Shamokin house was not taxpayer's "home" in 1968, or at least to show that taxpayer had not borne his burden of so proving (see Brandl v. Commissioner, supra, p. 699). Taxpayer began making the $40 per month payments to his mother in 1966 (Ex. 9), at a time when even he does not claim that the Shamokin house was his "home". He testified that the motivation for the payments

was to "help" his mother (Tr. 81), to assist her in her need for added income. (Tr. 26.) At no time did taxpayer provide furnishings for the Shamokin house (Tr. 35), nor did he contribute regularly to the taxes, insurance, maintenance, and utilities for his mother's house (Tr. 81). Other than moving some clothing and files to Shamokin after separating from his wife, and receiving some mail and other communications in Shamokin, taxpayer had no ties of a "home" character to that place. Indeed he could be and was contacted regarding employment in Vermont. (Tr. 23.) He himself testified that his main purpose in making one of his three short trips to Pennsylvania in 1968 was to break his consecutive Vermont residency (Tr. 57; (R. 9a), presumably to satisfy Government contract standards for receiving per diem reimbursement. That motivation hardly comports with the ordinary concept of a "home"; it rather suggests mechanical technical actions to satisfy per diem requirements. Moreover, taxpayer registered his autmobile at his Vermont address in 1968 (Tr. 57), and was never registered to vote in Pennsylvania (Tr. 58).

The evidence in years other than 1968 confirms the conclusion that Shamokin was not taxpayer's home, in 1968 or otherwise. He never worked in Shamokin. (Tr. 94-95; Ex. 8.) He began living in a travel trailer in Vermont in August, 1968 (Tr. 36) where his wife-to-be did typing for him and

later lived with him (R. 35-36)--much of the time in Vermont and Minnesota. And although taxpayer still owns an interest in the Shamokin house,[5/] he does not now consider Shamokin his home (Tr. 46).

C. Taxpayer also failed to show that the Tax Court clearly erred in finding that the Windsor house occupied by his estranged wife in 1968 was not his "home" in that year

Taxpayer has also failed to show that the Tax Court was clearly erroneous in finding (R. 14a, fn. 3) that the Windsor, Pennsylvania, home "of his former wife and children * * * was their home [but] was not his home during 1968."[6/] Taxpayer's argument (Br. 11) that the Windsor house was his home for some part of 1968 on the basis of his mortgage and furniture payments during that year are plainly insufficient to upset the Tax Court's finding. Such payments respecting the Windsor house do not establish it as his "home" any more than his payments allegedly made respecting his mother's house. In any event, other evidence amply supports the Tax Court's finding that the Windsor house was not his home in 1968.

5/ Taxpayer did not explain why he now owns only a one-third interest in his mother's house (Tr. 46), although the 1966 contract provides that he was purportedly purchasing a one-half interest.

6/ See also (R. 8a).

Taxpayer testified that, in 1967, his former wife threatened to divorce him if he went job shopping again. (Tr. 93.) In November, 1967, taxpayer took the job with I.B.M. in Essex Junction, Vermont (Stip. par. 6), and shortly after arriving there he received a letter from his former wife stating that she wanted a divorce. (Tr. 92.) Taxpayer further testified that they were estranged for "almost all of 1968." (Tr. 93.) In light of this evidence, taxpayer's failure to produce any evidence of the precise time period in 1968 when he supposedly was still living with his wife, and his failure to specify the point at which his home allegedly shifted to Shamokin, the Tax Court's finding should not be upset.

D. The Tax Court did not give undue weight to taxpayer's failure to incur duplicate expenses in finding that Shamokin was not taxpayer's "home"

Taxpayer finally misses the mark in attempting (Br. 10, 14-17) to undercut the Tax Court's findings by arguing (Br. 14) that it "incorrectly applied a standard requiring that * * * taxpayer * * * incur duplicate expenses to maintain his Pennsylvania 'home'." Initially, taxpayer errs in speaking of his "Pennsylvania" home. It is obvious that an entire state cannot constitute a home within the ordinary meaning of that term as used in Section 162. Taxpayer's home had to be either the Windsor house or the Shamokin house, and for a specified portion of 1968 for either or both, or else neither was his home.

In any event, taxpayer's contention that the Tax Court imposed a duplicate expense requirement is totally mistaken. It is true that the Tax Court mentioned the taxpayer's failure to incur duplicate living expense in its opinion (R. 14a), yet it did not do so as an absolute precondition or rest its "home" finding on that factor alone. As we have shown above, pp. 14-18, the court also expressly considered taxpayer's separation from his former wife in late 1969 or early 1968 (R. 8a); his employment in Vermont during all of 1968 (R. 8a-9a); his brief, infrequent visits to Shamokin mainly to break his Vermont residency (R. 9a); his failure to ever work as a writer in Shamokin (R. 9a); and his purchase of a travel trailer in late 1968 and his residing therein until 1971 (R. 10a). Even taxpayer acknowledges (Br. 15-16) that failure to incur duplicate expenses is one factor to be considered in making the "away from home" finding. Rosenspan v. United States, supra, p. 912; James v. United States, supra, pp. 206-207; Hicks v. Commissioner, 47 T.C. 71, 74-75 (1966). Indeed, taxpayer himself bases virtually all of his argument that Windsor was his home for part of 1968, and much of his contention that Shamokin was his home for the rest of that year, on his alleged payment of duplicate expenses for those houses. Having failed to prove his case on the basis of duplicate expenses incurred, he should not be permitted to upset the Tax Court's findings derived from all the evidence on the baseless ground that the Tax Court overemphasized the lack of duplicate expenses.

CONCLUSION

For the reasons set forth above, the decision of the Tax Court should be affirmed.

Respectfully submitted,

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NOVEMBER, 1975.

CERTIFICATE OF SERVICE

It is hereby certified that service of this brief has been made on opposing counsel by mailing four copies thereof on this 10th day of November, 1975, in an envelope, with postage prepaid, properly addressed to him as follows:

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APPENDIX

Internal Revenue Code of 1954 (26 U.S.C.):

SEC. 162. TRADE OR BUSINESS EXPENSES.

(a) In General.--There shall be allowed as a deduction all the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business, including--

* * *

(2) [as amended by Sec. 4(b), Revenue Act of 1962, P.L. 87-834, 76 Stat. 960] traveling expenses (including amounts expended for meals and lodging other than amounts which are lavish or extravagant under the circumstances) while away from home in the pursuit of a trade or business;

* * *

SEC. 262. PERSONAL, LIVING, AND FAMILY EXPENSES.

Except as otherwise expressly provided in this chapter, no deduction shall be allowed for personal, living, or family expenses.